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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 TEDDY LEROY WILSON, JR.,

12 Plaintiff,

13 vs.

14 ISMAEL BRIZYELA, et al.,

15 Defendants.

CASE NO. 06CV2420 WQH (BLM)

ORDER ADOPTING REPORT AND  
RECOMMENDATION

16 HAYES, Judge:

17 Pending before the Court is the Report and Recommendation of Magistrate Judge Barbara L.  
18 Major recommending that the Court grant in part, and deny in part, Defendants' motion to dismiss  
19 Plaintiff's Second Amended Complaint. (Doc. # 46).

20 **BACKGROUND**

21 On May 22, 2007, Plaintiff Teddy Leroy Wilson, Jr. filed a Second Amended Complaint  
22 against Defendants Ismael Brizyela, Denise Johnson, and Hector Rubio alleging that Defendants  
23 violated Plaintiff's constitutional rights to equal protection, due process, and the right to be free from  
24 excessive force. (Doc. # 13). On June 12, 2007, this Court screened Plaintiff's Second Amended  
25 Complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) and 1915A(b), and sua sponte dismissed Plaintiff's  
26 equal protection and due process claims. (Doc. # 14). The Court did not dismiss Plaintiff's excessive  
27 force claims for money damages and injunctive relief. (Doc. # 14).

28 On July 18, 2007, Defendants Rubio and Brizyela filed a motion to dismiss Plaintiff's claims

1 for excessive force on grounds of Eleventh Amendment immunity. (Doc. # 25). On January 24, 2008,  
 2 Plaintiff filed an opposition to the motion. (Doc. # 44). On January 29, 2008, Defendants filed a  
 3 reply. (Doc. # 45).

4 On January 30, 2008, Magistrate Judge Barbara L. Major issued a Report and  
 5 Recommendation recommending that this Court grant in part, and deny in part, Defendants' motion  
 6 to dismiss. (Doc. # 46). The Magistrate Judge concluded that Defendants were entitled to immunity  
 7 on Plaintiff's claim for damages against Defendants in Defendants' official capacities. However, the  
 8 Magistrate Judge concluded that Defendants were not entitled to immunity on Plaintiff's claims for  
 9 damages against Defendants in their individual capacities. (Doc. # 46). Neither party filed objections  
 10 to the Report and Recommendation.

#### 11 **STANDARD OF REVIEW**

12 The duties of the district court in connection with a Magistrate Judge's Report and  
 13 Recommendation are set forth in Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C.  
 14 § 636(b)(1). Where the parties object to a Report and Recommendation, "[a] judge of the [district]  
 15 court shall make a de novo determination of those portions of the [Report and Recommendation] to  
 16 which objection is made." 28 U.S.C. § 636(b)(1); *see Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).  
 17 When no objections are filed, the district court need not review de novo the Report and  
 18 Recommendation. *Wang v. Masaitis*, 416 F.3d 992, 1000 n. 13 (9th Cir. 2005); *United States v.*  
 19 *Reyna-Tapia*, 328 F.3d 1114, 1121-22 (9th Cir. 2003) (en banc). A district court may always, "accept,  
 20 reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge."  
 21 28 U.S.C. § 636(b)(1); *Wilkins v. Ramirez*, 455 F. Supp. 2d 1080, 1088 (S.D. Cal. 2006); *Or. Natural*  
 22 *Desert Ass'n v. Rasmussen*, 451 F. Supp. 2d 1202, 1205 (D. Or. 2006).

#### 23 **DISCUSSION & ORDER**

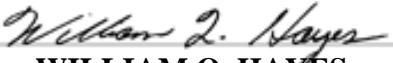
24 Neither party objected to the Magistrate Judge's Report and Recommendation, and the Court  
 25 has reviewed the Report and Recommendation in its entirety. The Court concludes that the Magistrate  
 26 Judge correctly determined that Defendants are entitled to Eleventh Amendment immunity with  
 27 respect to Plaintiff's claims for damages against Defendants in their official capacities, but that  
 28 Defendants are not entitled to immunity with respect to Plaintiff's claims for damages against

1 Defendants in their individual capacities. Construing Plaintiff's Second Amended Complaint  
2 liberally, as this Court must, it is evident that Plaintiff intended to assert claims against Defendants  
3 in both their individual and official capacities. *See* (Doc. # 13 at 2).

4 IT IS HEREBY ORDERED that the Report and Recommendation (Doc. # 46) is ADOPTED  
5 in its entirety. Defendants' motion to dismiss (Doc. # 25) is GRANTED as to Plaintiff's claims for  
6 damages against Defendants in their official capacities. Defendants' motion to dismiss (Doc. # 25)  
7 is DENIED as to Plaintiff's claims for damages against Defendants in their individual capacities.

8 **IT IS SO ORDERED.**

9 DATED: February 27, 2008

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11 **WILLIAM Q. HAYES**  
12 United States District Judge  
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